
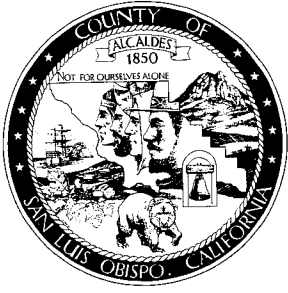


**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT General Services		(2) MEETING DATE June 13, 2006		(3) CONTACT/PHONE Duane P. Leib (805) 781-5200		LVF
(4) SUBJECT Request to approve Amendment No. 2 and Conditional Assignment of Lease for the Food and Beverage Concession Contract at the Higuera Street Café, located on the ground floor of the New County Government Center at 1074 Higuera Street in San Luis Obispo, assigning the contract from Cornerstone Market, Inc. to Gourmet Sugarplum Fairy, L.L.C. effective June 15, 2006.						
(5) SUMMARY OF REQUEST Approval of the attached Amendment No. 2 and Conditional Assignment of Lease will authorize the Gourmet Sugarplum Fairy, L.L.C. to continue to operate the Higuera Street Café under the same terms and conditions of the existing Food and Beverage Concession Contract with Cornerstone Market, Inc.						
(6) RECOMMENDED ACTION The Department of General Services recommends your Board approve the attached Amendment No. 2 and Conditional Assignment of Lease and authorize the Chairperson to sign the document.						
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR COST None		(9) ANNUAL COST None		(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): County Counsel						
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____						
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input checked="" type="checkbox"/> 5th, <input type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board N/A	
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A			
(18) NEED EXTRA EXECUTED COPIES? <input checked="" type="checkbox"/> Number: <u> 1 </u> <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A			(19) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A			
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input type="checkbox"/> N/A Date <u> 04/19/2005 </u>	
(23) ADMINISTRATIVE OFFICE REVIEW <div style="text-align: center; font-size: 2em; font-family: cursive;">  </div>						

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 6-13-06



COUNTY OF SAN LUIS OBISPO

department of general services

COUNTY GOVERNMENT CENTER • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5200

DUANE P. LEIB, DIRECTOR

TO: BOARD OF SUPERVISORS

FROM: DUANE P. LEIB, GENERAL SERVICES DIRECTOR

DATE: JUNE 13, 2006

SUBJECT: REQUEST TO APPROVE AMENDMENT NO. 2 AND CONDITIONAL ASSIGNMENT OF LEASE FOR THE FOOD AND BEVERAGE CONCESSION CONTRACT AT THE HIGUERA STREET CAFÉ, LOCATED ON THE GROUND FLOOR OF THE NEW COUNTY GOVERNMENT CENTER AT 1074 HIGUERA STREET IN SAN LUIS OBISPO, ASSIGNING THE CONTRACT FROM CORNERSTONE MARKET, INC. TO GOURMET SUGARPLUM FAIRY, L.L.C. EFFECTIVE JUNE 15, 2006.

RECOMMENDATION

The Department of General Services recommends your Board approve the attached Amendment No. 2 and Conditional Assignment of Lease and authorize the Chairperson to sign the document.

DISCUSSION

On August 17, 2004, following the publishing of a Request for Proposals, the Board of Supervisors approved a Concession Contract for the lease and management of the restaurant site on the ground floor of the new County Government Center at 1074 Higuera Street in San Luis Obispo. The contract was awarded to Cornerstone Market, Inc., solely owned and operated by Adnan Saleh who also operates the Jaffa Café at 1212 Higuera Street in San Luis Obispo. On April 19, 2005, the Board approved the First Amendment to the contract, authorizing rent credits toward some of the costs of tenant improvements. The contract allows for assignment to a new operator, subject to prior written consent of the County and a new \$20,000 letter of credit and insurance to be provided by the new operator.

Gourmet Sugarplum Fairy, L.L.C. is 90% owned by Sherri Grider, who will personally manage the day-to-day operations of the business as well as perform the baking functions. Ms. Grider has a culinary degree from the Illinois Institute of Art in Chicago and has been locally employed as a Bakery Supervisor for the past 3 years. Business partner, Alice Yoo, owns the remaining 10% interest and will oversee the reporting for the business that is required legally and financially.

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In her business plan, Ms. Grider proposes to expand operating hours to include dinners on Thursdays, Fridays, and Saturdays and brunch on Sundays beginning in July. She will apply for an on-site beer and wine sales permit and sell alcohol only when the County Government Center is closed, as permitted in the existing contract. She will expand the selection of baked goods to offer a full-service bakery. She plans to continue operations with basically the same staff and menu, and will continue to call the business the "Higuera Street Cafe." This Amendment No. 2 is subject to successful close of escrow between the parties, which is scheduled for June 15, 2006.

The proposal has been evaluated by a review committee consisting of General Services management staff. As a start-up business the Gourmet Sugarplum Fairy L.L.C. has adequate financial resources considering all of the capital investment in the business has already occurred and the improvements are all new. At the current rental rate (which is the higher of 5% of gross receipts or \$2,500 base rent per month) the rent credits will carry forward until approximately December 2008. It is anticipated that by the time the rent payments begin, the business should be established and able to support the obligation. Cornerstone Market, Inc is financing the sale of the business. The sales agreement and Conditional Assignment of Lease states that should the Gourmet Sugarplum Fairy L.L.C. default on the note carried by Cornerstone Market, Inc., the business will revert back to Cornerstone Market, Inc. Due to this reversionary clause, General Services is assured that the café will continue to operate for the convenience of County employees and the public.

OTHER AGENCY INVOLVEMENT

County Counsel has approved the legal form and effect of this Amendment No. 2 and Conditional Assignment of Lease for the Assignment of the County Government Center Food and Beverage Concession Contract at the Higuera Street Café.

FINANCIAL CONSIDERATIONS

No financial considerations are necessary in this analysis, as the underlying terms of the existing Food and Beverage Concession Contract remain unchanged.

RESULTS

Approval of the attached Amendment No. 2 and Conditional Assignment of Lease will authorize Cornerstone Market, Inc. to assign the County Government Center Food and Beverage Concession Contract for the Higuera Street Café, located on the ground floor of the New County Government Center at 1074 Higuera Street in San Luis Obispo, to Gourmet Sugarplum Fairy, L.L.C. effective June 15, 2006, subject to a successful close of escrow between the parties and a new \$20,000 letter of credit and insurance to be provided by the new operator.

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AMENDMENT NO. 2

ASSIGNMENT OF COUNTY GOVERNMENT CENTER FOOD AND BEVERAGE CONCESSION CONTRACT

WHEREAS, On August 17, 2004, the County of San Luis Obispo, a public entity in the State of California, entered into a County Government Center Food and Beverage Concession Contract with Cornerstone Market, Inc. ("Concessionaire") doing business as Higuera Street Café for the purpose of providing food and beverage concession services at 1074 Higuera Street, San Luis Obispo, CA; a facility located in the New County Government Center; and

WHEREAS, Cornerstone Market, Inc. ("Assignor") has proposed an Assignment of all of their interest in and to the Contract to Gourmet Sugarplum Fairy, LLC, a California limited liability company, as their nominee ("Assignee"); and

WHEREAS, paragraph 26 of the Contract, Assignment of Contract, prohibits an assignment thereof or therein except with prior written consent of the County of San Luis Obispo (hereinafter referred to as "County"); and

WHEREAS, Concessionaire/Assignor now requests County's written approval of the proposed assignment identified above.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and conditions herein set forth, County, Assignor, and Assignee mutually covenant and agree as follows:

1. Assignor warrants that no previous assignments of the Contract or any portions thereof or provisions therein have been made by Assignor.
2. Assignor shall remain liable as to any act, omission, or wrongdoing on their part or on the part of their officers, agents, or employees, occurring prior to close of escrow on the business sale to which the consent expressed herein is or may be a condition, and concerning or relating to the Assignor's business operations conducted under or pursuant to the Contract. In all other respects, the acceptance by County of Assignee as Concessionaire under the Contract shall be construed as releasing Assignor from the full performance of the provisions of the Contract. In regard to the foregoing language, it is the intent of the undersigned parties that, with the exception of rights related to performance under the Contract prior to close of escrow on Assignor's business, and having to do with Assignor's business operations, Assignee shall in all respects be treated as Concessionaire from, on, and after the date of close of escrow. It is the express understanding of the parties that the Assignor shall in no way be or remain obligated, following the close of escrow on their business, as to any aspect of the Contract not concerning or relating to their business operations conducted under or pursuant to the Contract; the term "business operations" shall be construed narrowly to

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include only matters having to do with daily business operations—e.g. action or inaction on the part of the employees while within the course and scope of employment, etc., and shall not include matters having to do with other aspects of the contractual relationship between Assignors and County – e.g. respective responsibilities in the areas of repair, maintenance, and component replacement or real property, or any part thereof or interest therein, which is subject to the Contract and upon which Assignors’ business operations are and have been conducted.

3. County shall have no, and is absolved of any, liability upon close of escrow on the sale of the Assignor’s business to which the consent expressed herein is or may be a condition, and as to any and all aspects of the Contract involving the respective rights and obligations of Assignor and County as to repair, maintenance, and component replacement of the real property, or any part thereof or interest therein, which is the subject of the Contract.
4. Assignor has disclosed all obligations and liabilities of Assignor known to Assignor, and arising by virtue of their prior performance under the Contract. Assignor shall defend and hold County harmless from any and all obligations and liabilities incurred by Assignor to third parties prior to close of escrow on their business sale, whether presently known or unknown to Assignor, and concerning and relating to Assignor’s business operations conducted under or pursuant to the Contract.
5. Assignor hereby agrees that Assignee and County may change, modify, or further amend the contract in any way, including the rental to be paid thereunder, and that further assignments may be made without notice or consent of Assignor.
6. Assignee has reviewed the Contract, including Amendment No. 1, has had the opportunity to review the Contract with independent legal counsel, and hereby assumes all of the terms, covenants, and conditions of the Contract and agrees to fully and faithfully perform all of the obligations of the Concessionaire under the Contract.
7. County acknowledges and approves this assignment and agrees to be bound hereby.
8. The approval of this assignment by the San Luis Obispo County Board of Supervisors is subject to close of escrow between the parties known as Cornerstone Market, Inc. (Assignor) and Gourmet Sugarplum Fairy, LLC (Assignee).

/////////////////////////////////NOTHING FURTHER PAST THIS POINT////////////////////////////////

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IN WITNESS WHEREOF, County, Assignor and Assignee have executed this Amendment No. 2 to the County Government Center Food and Beverage Concession Contract on the day and year set forth.

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

Approved by the Board of Supervisors
on:

_____, 2006

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL
EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: Rita Neal
Deputy County Counsel

Date: 6/1/06

Assignor: CORNERSTONE MARKET, INC.

By: Adnan Saleh
Adnan Saleh, President

Date: 6/01/06

Corporate Certificate

I, **Thea Labrenz**, certify that I am the Secretary of the Corporation named in the foregoing Amendment No.2; that Adnan Saleh, who signed Amendment No. 2 on behalf of the corporation, was then **President** of said Corporation; and said Amendment No. 2 was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

By: Thea Labrenz
Thea Labrenz, Secretary
(Corporate Seal)

Assignee: GOURMET SUGARPLUM
FAIRY, L.L.C.:

By: Sherri Grider
Sherri Grider, President

Date: 5-31-06

I, **Alice Yoo**, certify that I am the Secretary of the Corporation named in the foregoing Amendment No.2; that Sherri Grider, who signed Amendment No. 2 on behalf of the corporation, was then **President** of said Corporation; and said Amendment No. 2 was duly signed for and in behalf of said Corporation by authority of its governing body and is within the scope of its corporate powers.

By: Alice Yoo
Alice Yoo, Secretary
(Corporate Seal)

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